

thing as a decree in the federal courts to the effect that a judgment by confession, regularly entered in a state court, is an assignment. A judgment of that kind has the same force and effect as if it had been regularly entered after a trial and contest, and it is equally binding on the parties. It cannot be interfered with by this court. A person who has levied on property under a judgment of that kind, and sold the property, is entitled to hold the proceeds until the judgment is set aside for fraud, or on some other ground, or by motion in the state court, because of some defect in the proceeding.

*Mr. Binswanger.* Does your honor hold that Justice MILLER went beyond the rulings of your honor in *Weil v. Polack*?

*The Court.* I think he clearly overruled the case of *Clapp v. Nordmeyer*, 25 Fed. Rep. 72, and all the cases in the federal courts of this state that have undertaken to construe or decree a judgment of a state court to be an assignment. The state laws authorize confessions of a judgment as well as voluntary assignments. A confessed judgment is something entirely different from an assignment, and, in my opinion, such judgments can only be attacked for the same reasons that you can attack an ordinary judgment; that is, for fraud, or on account of some irregularity in the proceeding. I have several times, since Justice MILLER overruled the motion for a rehearing in *Weil v. Polack*, (thereby overruling *Clapp v. Nordmeyer*,) announced that bills could no longer be entertained in the federal court to declare that a confession of judgment was a voluntary assignment. Judge BREWER, I am very certain, understands the effect of that decision the same as I do.

*Mr. Binswanger.* I understood Justice MILLER's decision to mean that a confession of judgment will not be regarded as a deed of assignment, unless it is an evasion of the state law, and is followed by a deed of assignment on the same day.

*The Court.* No; he didn't state any such exception to the rule. He held broadly that a confession of judgment could not be construed as an assignment, and enforced as such. You may have such a judgment annulled for fraud in a proper proceeding, or set aside for irregularity; but you cannot obtain a decree declaring it to be something entirely different from a judgment and enforcing it as such. I will sustain the demurrer to your bill.

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REINEMAN *et al.* v. BALL *et al.*

(Circuit Court, S. D. New York. February 14, 1888.)

#### REMOVAL OF CAUSES—SEPARABLE CONTROVERSY.

In an action to set aside a general assignment, each of the plaintiffs being a separate judgment creditor of the assignors, where no issue is raised as to the judgments, and the only facts controverted being those tending to impeach the *bona fides* or validity of the assignment, and the preferences created by it, and the only issue being whether or not the assignment was fraudulent, no

such separable controversy is presented as to authorize a removal of the action on the ground of the diversity of citizenship, some of the plaintiffs being residents of the same state as the defendant.

On Petition to Remand.

Action brought by Samuel Reineman and others against Michael Ball and others to set aside a general assignment.

*Franklin Bien*, for plaintiffs.

*Baker & Schwartz*, for defendants.

LACOMBE, J. This action was begun in the state court on April 27, 1886, by four of the plaintiffs against the defendants, all parties being citizens and residents of New York. Subsequently, the summons and complaint were amended by bringing in two additional plaintiffs, citizens and residents of Massachusetts. These latter thereupon removed the cause into this court, but without entering here the copy of the record required by the removal act. Defendants have, therefore, themselves entered the record, and now move to remand, in accordance with the rules and practice of this circuit. *Anderson v. Appleton*, 32 Fed. Rep. 855.

The action is brought to set aside, as fraudulent, a general assignment made by the defendants, Ball & Levy, to Julius Altman. Each of the plaintiffs is a separate judgment creditor of the defendants, Ball & Levy. Executions have been issued on their several judgments, and returned unsatisfied. No issue is raised as to these judgments, the defendants only controverting such facts as tend to show that the assignment was fraudulent or invalid, or that the preferences it contains are fictitious; and the only controversy involved in the case is the question whether that assignment was fraudulent. This is not a separable controversy, within the later decisions. See *Anderson v. Appleton*, 32 Fed. Rep. 855, and cases there cited. Inasmuch, therefore, as citizens of this state are found on both sides of that controversy, the cause must be remanded.

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PARKER v. NEW ORLEANS, B. R. & V. R. Co. *et. al.*, (HAMLIN,  
Intervenor.)

(Circuit Court, W. D. Louisiana. January Term, 1888.)

1. RAILROAD COMPANIES—MORTGAGES—FUTURE PROPERTY.

In equity, future property may be mortgaged. A railway company, under the laws of Louisiana, when authorized to borrow money for construction purposes, may mortgage such property as it may acquire in the future, and as soon as the property is acquired the mortgage operates on it.

2. SAME.

Obviously, it would be difficult if not impracticable, for a railway company to specifically describe future property that it might acquire. When such property is mortgaged, the mortgage attaches to property subsequently acquired as if it had been described specifically in the act; it is entitled to the same effect in law as if it had been a judicial mortgage.